

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1071

To be argued by
BARRY BASSIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CHARLES DANIELS,
Defendant-Appellant.
-----x


Docket No. 77-1071

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CHARLES DANIELS
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

BARRY BASSIS,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

STATES DISTRICT COURT - CRIMINAL DOCKET

Felony ☒ JUDGE/Assigned Trial
 Offense ☐ MAGISTRATE
 Emergency ☐ 207 1 0718
 District Office

U.S. vs.

75 CR 299-1

Case Filed
 Day Mo. Yr. Docket No. Dist.
 25 11 75 899 1
 No. of Defendants 75CR96

CHARLES DANIELS

Defendant

CHARGES

18:659

Theft of goods from interstates shipment 1

MAGR. CASE NO.

BAIL OR RELEASE

☐ Personal Recog.
☐ Denied ☐ Unsecured Bond
☐ AMT ☐ Conditional Release
 Set (000) ☐ 10% Depos
 \$ ☐ Surety Bon
 /date/ ☐ Collateral
☐ Bail Not Made ☐ 3rd Party
☐ Bail Status Changed ☐ Custody
 (See Docket) ☐ PSA

EYS.

Paul Corcoran

LS

ARREST

INDICTMENT ☐ Information ☐

ARRAIGNMENT

TRIAL

SENTENCE

U.S. Custody or Began on Above Charges

☐ High Risk Defn. & Date Design'd

11/25/75

12/12

Trial Set For

Voir Dire ☐

Disposition

☐ Prosecution Deferred

☐ Waived ☐ Superseding ☐ Indict/Info

1st Plea

"

Final Plea

☒ Not Guilty ☐ Nolo ☐ Guilty ☐ Not Guilty ☐ Nolo ☐ Guilty

Trial Began ☐ Trial Ended ☐

☐ Convicted ☐ On All Charge ☐ Acquired ☐ On Lesser Offense(s) ☐ Dismissed ☐ WOP; ☐ WP ☐ Nolo/Discontinued

ATE

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		☐ Dismissed ☐ Exonerated ☐ Held for District GJ ☐ To Transferee District ☐ Held to Answer to U. S. District Court AT: _____ Magistrate's Initials
Summons	Issued			☐ Waived ☐ Intervening Indictment ☐ Not Waived		
	Served					
Arrest Warrant						
COMPLAINT				Tape No.	INITIAL/No.	
OFFENSE (In Complaint)						

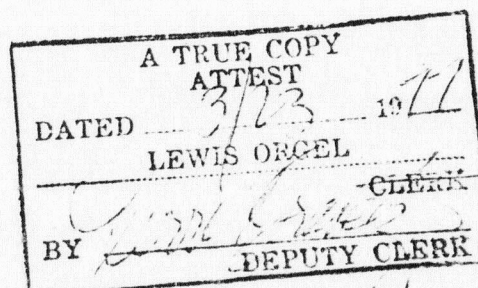
* Show last names and suffix numbers of other defendants on same indictment/information

V. Excludable Delay

DATE	PROCEEDINGS	(a)	(b)	(c)	(d)
11/25/75	Before COSTANTINO, J.- Indictment filed				
12/4/75	Petition for writ of habeas corpus ad prosequendum filed writ issued				
12/9/75	Before COSTANTINO, J.- Case called- defts present without counsel-case adjd to 12/12/75 for pleading				
12/12/75	Before COSTANTINO, J.- Case called- defts and counsel present-deft arraigned and enters a plea of not guilty-case adjd to 1/9/76 for status report				
12-15-75	Writ retd and filed - executed.				
12/31/75	Petition for writ of habeas corpus ad testificandum filed writ issued				
1-9-76	Before COSTANTINO J - case called - defts present without counsels - adjd to Jan. 16, 1976 for status report.				
1-16-76	Before COSTANTINO J - case called - deft present- atty present - defts waive their right to a speedy trial - adjd to 2-2-76 for trial.				
2-2-76	Before COSTANTINO J - case called - deft & atty P. Brown present - adjd to 2-17-76.				
5-11-76	Notice of readiness for trial filed				
7-2-76	Before PRATT, J - Case called. Deft present without counsel Adj'd to 7-13-76 at 9:45 AM. for status conference.				

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7/13/76	Before PRATT, J. - Case called. Deft & Counsel present. Adj'd to 10/4/76 at 10:00 for trial.				
9/27/76	Before PRATT, J. - Case called. Deft not present. Defts counsel present. Adj'd to 9/30/76 at 9:00 a.m. to fix trial date.				
9/30/76	Before PRATT, J. - Case called - Deft not present - Counsel present - Case adj'd to Mid-October for trial.				
10/5/76	Petition for Writ of Habeas Corpus Ad Prosequendum issued.				
10/7/76	Petition for writ of habeas corpus Ad Prosequendum returned and filed - executed.				
10/14/76	Before PRATT, J. - Case called. Deft not present. Counsel for deft present. Adj'd without date for trial. (to follow 76 CR 299 Suppression hearing).				
10-28-76	Before Pratt, J. - Case Called. Deft. & Counsel Present. Trial ordered & begun. The Jurors were selected and sworn. Govt. opens. Deft. opens. Trial to resume on 10-29-76 at 9:30 A.M.				
10-29-76	Before Pratt, J. - Case Called. Deft. & Counsel present. Trial resumed. Trial to continue on 11-1-76 at 9:30 A.M.				
11-1-76	Before Pratt, J. - Case Called. Deft. & Counsel present. Trial resumed. Government rests. Deft's motion to dismiss. Motion argued - Motion denied. Deft. rests. Govt. sums up. The court charges the jury. The jury returns from its deliberations with a verdict of guilty on counts 1 & 2. Jury polled. Jurors discharged. Trial concluded. Sentence adj'd. without date. Order of Sustenance signed. Order of Transportation signed.				
11-3-76	Order of Transportation filed.				
11-3-76	Order of Sustenance filed.				
11-4-77	Stenographer's transcript dtd 11-1-76 at 10 AM filed.				
1-12-77	Voucher for expert services filed.				
1-17-77	Motion from deft for continuation of sentence date filed.				
1-17-77	By PRATT, J. - Order dtd. 1-16-77 granting motion and adj'd sentence to 1-28-77 at 1:30 PM filed on bottom of motion paper filed.				
1-14-77	Stenographer's transcript dtd 10-28-76 at 10 A.M. filed.				
1-14-77	Stenographer's transcript dtd 10-29-76 at 10 A.M. filed.				
1-17-77	Defts motion to set aside verdict filed.				
1-28-77	Before Pratt, J. - case called - deft & counsel present - deft's motion to set aside verdict - Motion DENIED - Deft's motion to relieve Philip Brown as his counsel - Motion GRANTED - Deft sentenced to imprisonment for a period of 8 years on each of cts. 1 & 2. Sentences to run concurrent with each other & consecutive with state sentence. Notice of Appeal to be filed in forma pauperis. Clerk to file Notice of Appeal. New counsel to be assigned for purpose of Appeal. On motion of AUSA Edward Thompson indictment in 75 CR 96 is dismissed as to Charles DANIELS. -----				
1-28-77	Judgment and commitment filed. Certified copies to Marshal, Probation and US ATTY.				
1-28-77	Deft's Notice of Appeal filed.				
1-28-77	Docket entries and duplicate of Notice of Appeal mailed to the C. of A.				

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-14-77	(Document No.) Two sten. transcripts dtd. 10-28-76 and 10-29-76 filed.				
2-11-77	Voucher for expert services filed. Forwarded to Chief Auditor, Wash, D.C. for payment filed.				
2-17-77	Voucher for compensation filed. Forwarded with affidavit to Chief Auditor, Wash, D.C..				
2-17-77	Petitioner Daniels motion for a temporary restraining order etc. filed.				
2-23-77	By PRATT, J.- Order dtd. 2-22-77 denying defts motion for a TRO filed.				
2-28-77	Sten. transcript dtd. 7-13-77 filed in 75-Cr-96.				
3-1-77	Sten. transcript dtd. 12-9-75 filed.				
3-1-77	Sten. transcript dtd. 12-12-75 filed in 75-Cr-96.				
3-2-77	Civil appeal scheduling order filed.				
3-11-77	Stenographer's transcript dtd 1-28-77 filed.				
3/23/77	Record on appeal certified and hand delivered to the Cof A by Joan Gill.				



RJD:PFC:cj
F.#753,770

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA

-against-

CHARLES DANIELS and JOHN ALLEN
HOLMES,

Defendants.
----- x

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 13th day of April, 1972; within the Eastern District of New York, the defendant CHARLES DANIELS did knowingly, wilfully and unlawfully steal from a 1971 International truck bearing New Jersey license plate number XCC97C, a quantity of women's apparel having a value in excess of One Hundred Dollars (\$100.00), which clothing was moving in and constituted part of an interstate shipment of freight from Secaucus, New Jersey to Jamaica, New York. (Title 18, United States Code, Section 659).

75 CR 899

INDICTMENT

Cr. No. _____
(T. 18, U.S.C., §659)

FILED
CLERK'S OFFICE
DISTRICT COURT OF NEW YORK

NOV 25 1975

TIME AM

COUNT TWO

On or about the 13th day of April, 1972, within the Eastern District of New York, the defendants CHARLES DANIELS and JOHN ALLEN HOLMES, together with others not named herein, did wilfully and unlawfully receive and have in their possession a quantity of women's apparel having a value in excess of One Hundred Dollars (\$100.00), which goods had been stolen from a 1971 International tractor trailer bearing New Jersey license plate number XCC97C, while moving as a part of and constituting an interstate shipment of freight from Secaucus, New Jersey to Jamaica, New York, the defendants CHARLES DANIELS and JOHN ALLEN HOLMES, knowing the same to have been stolen. (Title 18, United States Code, Section 659).

A TRUE BILL.

William P. Lyons
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY

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21

THE COURT: Thank you, Mr. Could.

22

We are now going on to the charge of the

23

Court.

24

Members of the jury: We are now at the stage

25

of trial where you are about to undertake your final

Charge of the Court

function as jurors. Your duty is a serious and important one. In performing it, you actively share with me the responsibility of administering justice according to law and the evidence in this case. Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality and, as was emphasized by me when you were selected as jurors without bias or prejudice for or against the Government or the defendant as parties to this controversy. You must not permit yourselves to be governed by sympathy or any other consideration which is not founded in the evidence and in these instructions on the law.

The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendant, who is charged with serious crimes, and has the right to receive a fundamentally fair trial. The community has an interest in that, too.

The fact the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration.

Charge of the Court

All parties, the Government and individuals alike, stand as equals before the bar of justice.

In this charge, I shall describe for you, first, the general principles applicable to all criminal trials, then the nature of the charges in this case, and then the specific rules of law which are applicable to those charges, and finally, something about how you should reach a verdict.

Your final role is to decide and to pass upon the factual issues in this case.

You are the sole and exclusive judges of the facts. You determine the weight of the evidence; you appraise the credibility of the witnesses; you draw the reasonable inferences from the evidence.

My function now is to instruct you as to the law, and it is your duty to accept these instructions as to the law and to apply them to the facts, as you may find them. With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel either for the Government or the defense may have said with respect to matters in evidence, whether during the trial, in a question, in argument, or in a summation, is not to be substituted for your own recollection of the evidence.

Charge of the Court

So, too, as to any matter in evidence, anything that I may have said during the trial, or may refer to during the course of these instructions, is not to be taken in place of your own recollection. I have no view of the guilt or innocence of this defendant.

This indictment here like all indictments is merely an accusation, a charge. It's not evidence of the defendant's guilt. Since the defendant has pleaded not guilty, the Government has the burden of proving the charges against the defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. On the contrary, the defendant is presumed to be innocent of the accusations contained in the indictment.

This presumption of innocence was in his favor at the start of the trial. It continued in his favor throughout the entire trial, and it is in his favor even as I instruct you now, and it remains in his favor during the course of your deliberations in the jury room. It is only if and when you are satisfied that the Government has sustained its burden of proving the defendant's guilt beyond a reasonable doubt. If the Government has failed to sustain its

burden, then the presumption of innocence alone is sufficient to acquit him.

I have used the term 'reasonable doubt.' What is a reasonable doubt? The words almost define themselves. That there is a doubt founded in reason and arising out of the evidence in the case or lack of evidence. It is a doubt which a reasonable person after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, to your judgment, to your common sense and your experience.

It is not caprice, whim, speculation, conjecture or suspicion; it is not an excuse to avoid the performance of an unpleasant duty; it is not sympathy for a defendant. If, after a fair and impartial consideration of all of the evidence, you can, candidly and honestly, say you are not satisfied of the guilt of the defendant, that you do not have an abiding conviction of his guilt, in sum, if you have such a doubt as would cause you as prudent persons to hesitate in matters of importance to yourselves, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if after such an impartial

Charge of the Court

and fair consideration of all of the evidence, you can, candidly and honestly, say you do have an abiding conviction of the defendant's guilt, such a conviction as you would be willing to act upon, in important and weighty matters, in the personal affairs of your life, then you have no reasonable doubt, and undersuch circumstances it is your duty to convict.

One final word on this subject. Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few persons, however guilty they might be, would be convicted. Since it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Nor is it the Government's burden to prove each and every bit of evidence to be true beyond a reasonable doubt. It's burden is to prove beyond a reasonable doubt each and every essential element of the crime charged. Reasonable doubt may arise from the failure of the Government to produce evidence.

The defendant is not obligated to present

2 evidence in his favor. He had the right to rely on
3 the failure by the Government to prove its case. He
4 may also rely on the evidence brought out on cross-
5 examination of witnesses called by the Government.
6 On the other hand, the defendant has the power to
7 subpoena in support of his position if he so chooses,
8 and he may exercise that power, if he chooses.

9 I have used the terms 'inference' and
10 'presumption.' An 'inference' is a conclusion which
11 reason and common sense lead you to draw from the
12 facts which have been established by the evidence in
13 the case. The jury may draw the inference.

14 Evidence is the method by which a disputed
15 fact is proved or disproved. Evidence is generally
16 classified as direct or circumstantial. Direct
17 evidence is the testimony of any witness as to what
18 that witness saw or heard. That is, what he knows of
19 his own knowledge.

20 Circumstantial evidence or indirect evidence,
21 however, is where facts are established from which,
22 in terms of common experience, one may logically
23 infer are the facts of the sort to be established.

24 A very simple difference between direct and
25 circumstantial evidence might be in the case of rain.

If you go outside and it's raining, you can see it and you will feel it. You can say that it's raining. That's direct evidence. That is, your description of the rain is direct evidence. It's raining. On the other hand, if you are inside and you can't see outside and you see people coming in and you see them drying off their clothing and some people are closing umbrellas, that is circumstantial evidence that it is raining outside. Even if you can't see that it is raining, you might well be convinced that it was, in fact, raining at that time.

What is the evidence in this case which you may consider? It consists of:

1. Sworn testimony of witnesses regardless of who may have called them;
2. Exhibits received in evidence regardless of who may have produced them; and
3. Facts which may have been admitted or stipulated to by the attorneys.

What is not evidence?

1. Statements or arguments of counsel in opening, summation or made during the trial are not evidence;
2. Statements by me are not evidence;

Charge of the Court

3. Evidence stricken from the record and which you were instructed to disregard is not evidence; and

4. Questions to which objection has been sustained.

You are not to speculate on what the answer might have been had the Court the question to be answered.

Now, we turn to the specific charges made in the indictment against the defendant. At the outset, I want to re-emphasize that the indictment merely states the charges and that it has no weight as evidence, none at all. The indictment contains two counts. Each count charges the defendant with one offense.

Count 1 charges that on or about April 13, 1972, the defendant Charles Daniels, knowingly, willfully and unlawfully, stole from a motor truck a quantity of women's apparel having a value in excess of one hundred dollars. The indictment also charges that the women's apparel constituted and was moving as, and was a part of, an interstate shipment of freight. On the basis of these allegations, Count 1 charges that the defendant violated Section 659 of

Charge of the Court

Title 18 of the United States Code.

Count 2 of the indictment charges that on or about April 13, 1972, the defendant Charles Daniels willfully and unlawfully received and had in his possession women's apparel worth in excess of \$100. The indictment also charges that the women's apparel had been stolen from a motor vehicle while moving as, and was a part of and constituted an interstate shipment of freight and that the defendant knew that the goods were stolen. On the basis of these allegations, Count 2 also charges that the defendant violated Section 659 of Title 18 of the United States Code.

I am now going to read to you the parts of Section 659 of Title 18 of the United States Code that are pertinent to the charges made in Counts 1 and 2. It says in part that: "Whoever steals or unlawfully takes from any motor truck or other vehicle with intent to convert to his own use any goods, moving as, or which are part of, or which constitute an interstate shipment of freight, express or other property, whoever, receives or has in his possession any such goods, knowing the same to have been stolen, shall in each case be fined or imprisoned or both."

Charge of the Court

That means that in order to establish that the defendant is guilty as charged in Count 1, the Government must prove beyond a reasonable doubt four essential elements:

1. That the defendant stole the goods from a motor truck;

2. That the act of stealing was done unlawfully and with the intent to convert the women's apparel to his own use;

3. That the goods were at the time moving as, or constituted a part of an interstate shipment;

4. That the women's apparel was worth more than \$100.

As to the first essential element, if you determine that the defendant engaged in a dishonest transaction whereby he obtained from a motor vehicle women's apparel which rightfully belongs to another enterprise, the owner of the rights and benefits of ownership, you will have concluded that the defendant "stole" the goods from the motor vehicle.

As to the second essential element, the defendant acted unlawfully if he voluntarily and intentionally and with specific intent did something

Charge of the Court

that the law forbids. And the defendant acted with intent to convert to his own use, if the defendant intended to apply, or appropriate, or use, or sell the women's apparel for his own benefit or profit.

The interstate character of the property stolen is the third essential element of this offense. The property or goods must either be moving in or be part of an interstate shipment at the time they were stolen. The women's apparel wherein interstate, so, if their movement originated in one state and passed into or through another state. Even though the goods returned to the state from which they started.

As to the fourth and final element, the Government must establish that the value of the women's apparel allegedly stolen exceeded \$100. This value affects only the punishment, but it is a part of the charge in this indictment.

As you will remember, Count 2 of the indictment charges unlawful possession of stolen goods and in order to establish that the defendant is guilty as charged in Count 2, the Government must prove beyond a reasonable doubt five essential elements:

1. That there was a stealing of the women's clothing from a motor vehicle;

Charge of the Court

2. That at the time of the theft the clothing was moving or was a part of an interstate shipment;

3. That the defendant received the women's apparel or had them in his possession;

4. That the defendant knew the goods to have been stolen;

5. That the goods were worth more than \$100.

As to the first essential element of Count 2, if you determine that someone, not necessarily the defendant, engaged in a dishonest transaction whereby that person or persons retained goods from a motor vehicle, which goods rightfully belong to another enterprise, the owner of the rights and benefits of ownership, you will have concluded that the goods were stolen from a motor vehicle.

As to the second essential element, the interstate character of the property stolen. What I told you in connection with the first count is equally applied here.

The third element of Count 2 is that the goods were received or possessed by the defendant. A person who knowingly has a physical control over a thing

Charge of the Court

at a given time is in actual possession of it. The defendant may have had constructive as well as actual possession. That is, such a nexus or relationship between the defendant and the goods exists, that is, is reasonable to treat the extent of the defendant's dominion and control as if it were actual possession.

Stated differently, a person who has both the power and the intention to exercise dominion and control over a thing, either directly or through another person or persons, is in constructive possession, even though not having actual possession. In addition, possession can be sole or joint. If two or more persons share possession of a thing, each are said to be in possession of the goods in question.

The fourth element of this count is that the defendant must know that the women's apparel to have been stolen. The element of knowledge involves a state of mind on the part of the defendant. A person does not knowingly do a wrongful act if the action resulted from a mistake or any other innocent reason. It is not necessary that the defendant know that the women's apparel was moving as part of an interstate shipment, only that the defendant knew that the goods he had in his possession were stolen, and that you find

2 such knowledge beyond a reasonable doubt.

3 As to the fifth and final element, I have
4 already instructed you that the Government must
5 establish that the value of the women's apparel
6 exceeded \$100. Again, this value affects only
7 punishment, but it is a part of the charge in both
8 counts, 1 and 2. In addition, the defendant's
9 knowledge or belief with respect to the value of the
10 goods is wholly irrelevant. It is sufficient that
11 the defendant had knowledge that the goods were stolen
12 and you should consider all the facts and circum-
13 stances in the case in determining whether the
14 defendant had such knowledge.

15 The Government must prove every element of the
16 crimes charged beyond a reasonable doubt. If the
17 Government fails as to any element, you must acquit.

18 The fact that one element of the crime may or
19 may not exist has no bearing upon any other element of
20 the crime charged.

21 You may not infer solely from the existence
22 of one element of the crime, if you conclude that the
23 element has been established, the existence of any
24 other element of the crime.

25 If any element of the crime has not been

Charge of the Court

established beyond a reasonable doubt, your verdict must be not guilty. On the other hand, you must convict a defendant if each of the elements of any crime has been proved beyond a reasonable doubt.

A difficult aspect of any jury's duty is to determine the credibility of witnesses and to weigh their testimony. You the jurors are the sole judges of the credibility of the witnesses. Credibility refers to the believability of their testimony and the weight their testimony deserves.

Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he was telling the truth or giving you an accurate version of what occurred.

When you walk in the door of that courtroom and sit in the jury box, or while the trial is going on, when you are deliberating in the jury room, you have your common sense, your good judgment and your experience with you.

You decide whether or not a witness was straightforward and truthful. Whether he attempted to conceal anything. Whether he has a motive to testify falsely. Whether there is any reason why he might

color his testimony.

In other words, what you try to do, to use the vernacular, is to size up a person just as you would do in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

Scrutinize the testimony given and the circumstances under which each witness testified and every matter in evidence which tends to show whether a witness is worth of belief.

Consider each witness's intelligence, motive and state of mind, demeanor and manner while on the witness stand. The witness's own ability to observe the matters as to which he has testified, whether he shall have impressed you as having an accurate recollection of these matters. The relationship each witness might bear to either side of the case, the manner in which each witness might be affected by the verdict. The extent to which if at all each witness is supported or contradicted by the other evidence.

Evidence at some other time a witness has said or done something which is consistent with the witness's testimony at the trial may be considered by you for the purpose of judging the credibility of the

Charge of the Court

2 witness. If adopted by the witness, that is, if the
3 witness has admitted before you that he made the prior
4 statement, it also may be used as affirmative evidence
5 in the case. You may also consider the failure of
6 the witness to disclose information on prior
7 occasions, when the opportunity to do so presented
8 itself as inconsistent with that witness's testimony
9 at the trial.

10 Whether a prior statement is inconsistent is
11 a fact question solely for your determination. You
12 should determine whether the failure of a witness to
13 reveal information prior to his testifying before
14 you in reports or in statements he may have made is
15 inconsistent with his present testimony. In making
16 that determination, you should consider all the facts
17 and circumstances attendant at the time of making the
18 prior statement or the omission of information. In
19 determining whether the prior statement is inconsistent
20 with the testimony given before you, you may take into
21 consideration the nature of the examination here and
22 the purpose of the statement on the prior occasion.
23 You may take into consideration normal variations in
24 retelling an event to determine whether the
25 statements are truly inconsistent or merely a

Charge of the Court

difference in describing an occurrence.

It is for you and you alone to determine whether an inconsistency is to a material or immaterial and what effect the inconsistency has on the witness's credibility.

A witness, however, may be inaccurate, contradictory, or even untruthful in some respects and yet be entirely credible in the essentials of his testimony.

The ultimate question for you to decide in passing upon credibility is: Did the witness tell the truth here before you as to essential matters before you? If you find that any witness, and this applies alike to Government and defense, willfully testified falsely as to any material fact, you have a right to reject the testimony of that witness in its entirety or you may accept a part of portion which you believe to be credible.

The law does not compel a defendant in a criminal case to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon

Charge of the Court

a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

If any facts permit inferences which are equally consistent with guilt and with innocence, you may not consider those facts as evidence of guilt. But, if you are satisfied from the evidence as a whole that the defendant is guilty beyond a reasonable doubt, you should find a verdict of guilty.

At certain times in the trial the attorneys mentioned 3500 material. That term refers to copies of prior statements of its witnesses which the Government, as required by law, had supplied to the defendant's attorneys to use if they wished in cross-examining those witnesses.

I have sought not to comment on the evidence in any detail or to give any impression as to my own view, if I have one, of the relative weight of the evidence. If I have done so, however, I ask you to disregard it entirely because you are the sole judges of the facts.

From time to time in the course of the trial, objections have been made in rulings on evidence given. Draw no inferences from the comparative frequency of objections of one or the other side or

Charge of the Court

from the comparative record in having objections sustained. Disregard the question and draw no inferences from its wording about the answer that might have been given. When an objection is overruled, evidence then received has no special weight just because it was unsuccessfully objected to.

Under your oath as jurors, you cannot allow a consideration of the sentence which may be imposed upon a defendant if he is convicted to enter into your deliberations or to influence your verdict in any way. In the event of conviction, the duty of imposing sentence rests solely with the Court.

Your duty is to decide the case solely upon the evidence. To weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and these instructions.

The verdict in each instance must be unanimous.

Each of you as jurors is entitled to your own opinion, but each of you should exchange views with your fellow jurors. This is the very purpose of jury deliberation to discuss and to consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with one

Charge of the Court

another and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors. But, you should not hesitate to change an opinion which, after discussion with your fellow jurors, appears to you to be erroneous.

However, if after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are to yield your judgment simply because you are outnumbered. Your final vote must reflect your conscientious view as to how the issues should be decided.

The charges here are most serious. The just determination of this case is important to the public. It is equally important to this defendant.

(Continued next page)

Charge of the Court

(Continuing): Under your oath as jurors, you must decide this case without fear or favor and solely in accordance with the evidence and If the Government has failed to carry its burden as to the defendant, your sworn duty is to acquit. If it has carried its burden as to the defendant, you must not flinch from your sworn duty; you must convict.

If you wish to have some of the testimony repeated, you may make the request and I will call you into Court and have the reporter locate those portions you desire to hear and read them to you.

When you retire to the jury room, your first duty will be to select a foreman or forelady who will preside over your deliberations. During your deliberations, you should assume the attitude of judges of the facts, rather than partisans or advocates. In that way, you will be making a high contribution to the administration of justice.

You must report a verdict on both counts. You may find the defendant guilty or not guilty on either or both of the counts and the verdict in each case must be unanimous.

The marshal will be available outside the jury room to report when you have reached a verdict

Charge of the Court

2 or to let the Court know if there are any questions
3 which you wish to have answered.

4 When you have reached a verdict and are ready
5 to report, simply advise the marshal but do not
6 disclose to him what your verdict is. I will have
7 your foreman announce it orally back here in the
8 courtroom.

9 Sidebar.

10 (Whereupon, a sidebar conference was held.)

11 THE COURT: Are there any exceptions or
12 requests?

13 MR. BROWN: None by the defendant, your Honor.

14 MR. GOULD: None, your Honor.

15 THE COURT: With respect to the thirteenth
16 juror, I'll tell the Clerk to put all the cards in the
17 wheel and then the one he picks will be the thirteenth
18 juror.

19 (Whereupon, the sidebar concluded.)

Memorandum

TO : Whom It May Concern

DATE: June 3, 1976

FROM : Joseph Mouzon, Senior Officer

SUBJECT: Inmate Evaluation - Charles Daniels #00646-158

*Do not use
for original copy
Warden
Dey*

During my five years as a Correctional Officer, in the Bureau of Prisons, I have dealt with many men who have been incarcerated. Charles Daniels has been one of these individuals. After seeing and dealing with this individual for approximately 18 months, I have seen quite a change in Daniels' attitude and feelings toward the authoritarian figure.

During my tour of duty on March 21, 1976, Daniels assisted me in stopping a resident from repeatedly stabbing another resident, which would have result in much more physical injury to the resident had Daniels not assisted me in this incident. The stabbed resident required hospitalization in a local hospital's Intensive Care Ward.

In the past year of Daniels incarceration he has been instrumental in motivating many of the other residents as far as working and participating in various education and rehabilitative programs were concerned in the Unit that he has been housed.

Daniels has also help many of the residents to help themselves and each other toward the goals of becoming productive and useful residents of this institution. I believe some of these residents have realistic and law abiding goals they may now try to achieve outside; as well as the stamina to overcome any obstacles they may encounter once they are returned to society. But most important, this writer believes Daniels has very good individual qualities, and if his energy continue to be directed in the present manner, he should become a very productive and useful member of society. Daniels has also volunteered and performed very satisfactory in all the work assignments given him.

Finally, considering the above circumstances, I very strongly believe Daniels has good potential of becoming a real asset to society and his family upon release.

Joseph Mouzon
Joseph Mouzon
Senior Officer



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Memorandum

TO : WHOM IT MAY CONCERN

DATE: June 4, 1976

FROM : Hosie Coffee
Senior Officer Specialist

SUBJECT: INITIAL EVALUATION - CHARLES DANIELS #00646-158

Do not suggest that he would

With proper recognition of the limitations of judicial sentencing, as well as its strengths, one of the most fundamental responsibilities of a correctional agency is the care for offenders committed to it. Offenders do not give up their rights of integrity whether from human or natural forces, simply because they were convicted of a criminal offense.

In writing this memorandum, consideration will be given Charles Daniels in his non-living areas of this correctional facility; particularly with health and safety in mind.

Daniels is presently assigned to the Kitchen, which must be operated in the highest standards of sanitation and cleanliness. But what most often stands out beyond Daniels' superb work performance is the conscientious manner and spirit of involvement that he consistently display with regularity toward self improvement. Daniels overall personality and attitude during the 18 months I have known him have been very understanding. Daniels' involvement here also included preventive action--LIFE SAVING ASSISTANCE--as well as encouragement of better relations among inmates and staff.

Last but not least, it is the opinion of this writer and other correctional officers that Daniels will live up to the normal expectations of society once he is returned to the community, which should be at the most expeditious opportunity.

Respectfully submitted,

Hosie Coffee
Hosie Coffee
Senior Officer Specialist

Senior Officer Specialist



5010-112

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Memorandum

MCC-NY, NY
150 Park Row 10007

DATE: April 27, 1976

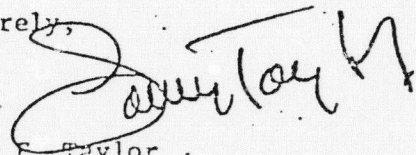
TO : Charles Daniels
Reg. No. 00646-15E

FROM : Larry F. Taylor
Warden

SUBJECT: Incident Dated 4/23/76

It has recently come to my attention that you were involved in saving the life of Mr. Frankos on the above mentioned date. I would like to take this opportunity to express to you my sincere appreciation for your preventive action. On behalf of all of the staff and Mr. Frankos, I want to thank you for your quick, life saving assistance.

Sincerely,


Larry F. Taylor
Warden



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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January 3, 1977

Honorable George Pratt
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: DANIELS, Charles
Reg. No: 00646-158
Docket No: 75 CR 899

Dear Judge Pratt:

Mr. Charles Daniels is scheduled to be sentenced in the Eastern District of New York in the near future on a conviction of Highjacking (Interstate Shipment). He was committed to the Metropolitan Correctional Center on October 1, 1975 on a Writ of Habeas Corpus from the Clinton County Correctional Facility. Prior to final sentencing, we thought you might appreciate some of our observations of Mr. Daniels during his stay at our facility.

F
Upon arriving at the Metropolitan Correctional Center, Mr. Daniels was given a complete physical examination and was found to be in good health. He claimed to have had some back problems and a lung condition, but he has not complained about these for quite some time. Because of Mr. Daniels legal status ~~being~~ committed by a Writ of Habeas Corpus, he was assigned to our Writ unit. Within a few weeks, Mr. Daniels had been involved in a fight and incurred an Incident Report. During the next two months, Mr. Daniels received several Incident Reports, being charged with fighting or conduct which disrupts the orderly running of the institution. Because of Mr. Daniels behavior and control problems, he was placed on our maximum security unit where his control could be more closely monitored. From February until June, 1976, he received two more Incident Reports for fighting (both reports conclude that Daniels had been fighting) and one for destruction of Government Property (in which he was found to have broken a window in his cell). However, since June, 1976 Mr. Daniels' behavior markedly improved. He has worked on his Unit Sanitation detail for which he receives a monthly Performance Pay and he has received numerous letters from our staff members, including myself, stating our appreciation for Mr. Daniels assistance in saving the life of another inmate at the Metropolitan Correctional Center. Other staff members have stated their appreciation of Mr. Daniels for his spirit of involvement with other inmates and staff and for his constructive attitude toward self-improvement. Since June, 1976, Mr. Daniels has not been a control problem nor has he had any Incident Reports. G

Mr. Daniels continues to enjoy regular visits from his wife and mutual friends. He spends his free time using our recreational facility and working on his case. He not enjoys a good relationship between staff and fellow inmates.

Mr. Daniels has talked with our staff about his past control problems and

he feels he has worked them out. He has not indicated that he wants any formal counseling or structured behavioral therapy. Upon release, he plans on returning to work and living with his wife.

Should you have any further questions about Mr. Daniels, please feel free to contact me.

Sincerely yours,

Larry F. Taylor
Warden

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CC: Prob.

orig sent - I. B. & J. Frank (cl: 1/5/11 - 12:00 pm)

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CERTIFICATE OF SERVICE

April 18, 1977

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Barry J. Basson